TAXATION—INHERITANCE TAXES—DEED OF TRUST RESERVING POWER OF REVOCATION NOT TAXABLE.—By the Illinois statute a tax is imposed "upon the transfer of any property . . . by deed . . . gift made in contemplation of death of the grantor . . . or intended to take effect in possession or enjoyment at or after such death." Several years before his death the grantor voluntarily conveyed real estate to a trustee to manage the same, the income to be paid to his children, the principal to be distributed upon the death of the last survivor of them. The trust deed reserved to the grantor the power of revocation. After his death, the state claimed a tax was due under the Inheritance Tax Act above quoted. The lower court so ruled. *Held,* that this did not constitute a taxable "transfer." *People v. Northern Trust Co.* (1919, Ill.) 124 N. E. 662.

It is well settled that a gift *inter vivos* made in contemplation of death, as well as a technical gift *causa mortis,* is taxable under such a statute. *People v. Danks* (1919, Ill.) 124 N. E. 625; Ross, *Inheritance Taxation* (1912) 159. But the gift in the principal case is neither. The lower court apparently held it taxable on the theory that the trust did not vest in possession or enjoyment until the grantor's death because of the power of revocation reserved by him. Evidence showed that this clause was inserted at the suggestion of the grantor's attorney as a protection for the donees in case any of them proved to be spendthrifts. The existence of a power of revocation can scarcely be deemed to prevent the trust from vesting immediately. Until the power is exercised, the trustee and the *cestuis* have all of the rights, privileges, powers, and immunities which they would have if the clause had been omitted, except only that they are subject to a liability to have these legal relations changed by the exercise of the power and they lack an immunity that they shall not be so changed. Of course, the grantor may reserve powers so extensive, with respect to controlling the trustee and the use of the income, that the trust will be held within the Tax Act. *In re Bostwick* (1899) 160 N. Y. 489, 55 N. E. 208; *Bullen v. State* (1916) 240 U. S. 625, 36 Sup. Ct. 473. Also, the principal case expresses the warning that a deed manifestly intended to evade the payment of inheritance taxes would furnish no protection in that regard.

TAXATION—INHERITANCE TAXES—TAXING NON-RESIDENTS MORE THAN RESIDENTS.—The New Jersey Inheritance Tax Law imposes a tax, graduated according to the value of the property and the relationship of the beneficiary, on the transfer by will or intestacy of certain kinds of property within the state belonging to a non-resident decedent; and provides that "if all or any part of the estate of such decedent, wherever situated, shall pass to persons . . . taxable under this act," the tax to be assessed shall "bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this state and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated." James McDonald and James J. Hill, non-resident decedents, left large estates consisting partly of stock in New Jersey corporations and partly of realty and personalty in other states. By reason of the graduation of the tax, the application of the apportionment *formula* resulted in imposing a greater tax on the transfer of the New Jersey stock than would have been imposed upon the transfer of an equal amount in similar manner of a resident decedent. *Held* (three justices *dissenting*), that the taxes were valid. *Maxwell v. Bugbee* and *Hill v. Bugbee* (1919) 40 Sup. Ct. 2.

That New Jersey may impose a tax upon the right granted by statute to the executor or administrator of a non-resident decedent to succeed to property

having its *situs* within the state was not questioned. The attack was made upon the method of assessment, which, by reason of the apportionment *formula*, resulted in a greater tax upon the transfer of the New Jersey stocks than would have been assessed if the stock has passed from a resident decedent. This was assailed, under the federal Constitution, as, first, giving residents "privileges and immunities" denied to non-residents; second, denying to non-residents the equal protection of the laws; and third, violating the due process clause by taxing the transfer of real estate located outside New Jersey. The majority opinion rejected the first contention with a summary reference to authorities; it overruled the second on the ground that classification between estates of resident and non-resident decedents is reasonable, and that absolute equality between the two classes is not required by the equal protection clause; it declares, as to the third, that the tax is levied upon the transfer of property within the state's jurisdiction, the property outside being merely used in the apportionment *formula* as a measure of the tax. See (1919) 28 YALE LAW JOURNAL, 802. The minority, on the other hand, speaking through Mr. Justice Holmes, asserts that increasing the tax by taking account of property outside the state is in effect taxing such property—which is beyond the state's power. He also appears to agree with the first contention of the plaintiffs in error. It is hard to see why granting to residents the privilege and power to bequeath New Jersey property free from payment of the larger tax, while denying the same privilege and power to non-residents, is not in violation of Art. 4, sec. 2, of the federal Constitution. See Cooley, *Constitutional Limitations* (7th ed. 1903) 569. The decision is another illustration of how far a state may go in discriminating against citizens of other states without running counter to constitutional prohibitions. See (1919) 28 YALE LAW JOURNAL, 601. Apart from the question of discrimination the New Jersey law has features both desirable and undesirable. If adopted in all states, for both residents and non-residents, it would lead to a very fair apportionment of the tax-returns from estates. But when combined with the prevailing system in other states, it offers fertile field for double levy.

TAXATION—JOINT BANK ACCOUNT—TRANSFER AT DEATH OF ONE JOINT OWNER.—One Stella Bigelow deposited money in the name of "Stella Bigelow or Caroline Bigelow, either or survivor." Caroline died. The state instituted proceedings to collect a tax on the ground that there had been a taxable transfer under section 220 of the Tax Law. *Held*, that the whole account should be taxed. *In re Bigelow's Estate* (1919, Surr. Ct.) 177 N. Y. Supp. 847.

The crucial question in the case was whether or not there was any "transfer." When Stella made the joint deposit, there was created in Caroline a privilege and a power to draw on the account to any amount, a liability to become sole owner of the account should Stella die first, and an immunity from the exercise by Stella of any dominion over the account except her own privilege and power to draw. All these legal relations died with Caroline. They were not *transferred* from Caroline to Stella in the ordinary sense: that where Caroline had possessed certain rights, privileges, powers, and immunities, Stella then acquired precisely similar relations—as would have happened had Caroline willed to Stella a house or a horse or a bank account. As it was, Caroline's death killed her own rights, privileges, etc., but created in Stella no new legal relations. For example, Caroline's privilege and power to draw on the account did not "pass" to Stella. Although Stella acquired nothing, she did benefit to the extent that her disadvantageous no-rights, liabilities, and disabilities died simultaneously with Caroline's privileges, powers and immunities. The court, without reasoning, denominated such a change of legal relations a taxable transfer.